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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

NICOLE J. AGUAYO, as Successor Trustee, etc., Plaintiff and Respondent, v. VIRGINIA TOPOL, Defendant and Appellant.	C080928 (Super. Ct. No. SCV0028821)

Defendant and appellant Virginia Topol appeals from an order by the trial court denying her claim of exemption for approximately $257,000 in her individual retirement account (IRA) ending in 5192. Topol argued she was entitled to the exemption because she was a Nevada resident and under Nevada law, there is an exemption for the first $500,000 of an IRA regardless of the debtor's needs. (Nev. Rev. Stat. § 21.090, subd. (r)(1) (2016).) The trial court, however, applied California law, reasoning that since the property (money in the IRA) was being held in Placer County, "California law controls regardless of the debtor's residence." Under California law, IRA funds "are

exempt only to the extent necessary to provide for the support of the judgment debtor . . . taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires." (Code Civ. Proc., § 704.115, subd. (e).) The court then found that "Topol did not meet her burden of proof that she needs the funds held in that account for her support, taking into account all resources that are likely to be available to her for her support." By doing so, the court found that those IRA funds (that were being held by the Placer County Sheriff based on a writ of execution obtained by plaintiff and respondent Nicole J. Aguayo (Aguayo), to whom a judgment of approximately $1.77 million was owed by Topol) must be released to Aguayo. We affirm because California exemption law applies and Topol has not carried her burden of proving there was insufficient evidence to support the trial court's factual finding that she did not need the IRA for her support.

FACTUAL AND PROCEDURAL BACKGROUND

Topol's husband had instituted bankruptcy proceedings before he died in July 2013. In March 2014, after his death, the bankruptcy court ruled that the husband's domicile was Nevada and the exemptions provided under Nevada law should apply. The husband had a Bank of the West IRA (the one at issue here) that passed through to Topol when he died.

In April 2013, the Placer County Superior Court entered a judgment against Topol in favor of Aguayo for approximately $1.77 million.[1]

In July 2015, the Placer County Sheriff served a writ of execution (that had been obtained by Aguayo) on Bank of the West for all the bank accounts in the name of

[1] The judgment was based on Topol's personal guarantee of her late husband's $1.5 million promissory note to Aguayo.

Virginia Topol at its bank branch located in Tahoe City, California. Topol filed a claim of exemption, arguing that she was a Nevada resident and under Nevada law, the IRA was exempt. In the alternative, she argued that under California law, the IRA was also exempt. In support of her claim of exemption, she filed an affidavit stating the following: She is 75 years old (as of September 2015); she resides at a condominium in Reno, paying $1,925 per month in rent. After her husband died, she received intermittent monetary disbursements from her children, but none of them are under a contractual obligation to support her. She also filed a financial statement that stated her monthly income was $1,327 in Social Security plus $833 from a $10,000 distribution in 2014 for a total of $2,160, and her expenses (including rent) were $4,547.

Aguayo filed an opposition to the claim of exemption, which included a declaration from her attorney setting forth the following facts: At a debtor's examination of Topol in October 2014, Topol stated she received $2,500 per month from a limited liability company (owned and controlled by her son) plus $1,375 in Social Security. She wears a ring valued at over $100,000, although she claims to have gifted all her valuable jewelry to her children. Topol has not been using the funds from the IRA for the last two years since her husband's death.

The trial court denied her claim of exemption, ruling that since the property (money in the IRA) was being held in Placer County, "California law controls regardless of the debtor's residence." And "Topol did not meet her burden of proof that she needs the funds held in that account for her support, taking into account all resources that are likely to be available to her for her support."

Topol timely appeals from the order denying her claim of exemption, contending Nevada law controls and, even if it does not, the trial court's conclusion (that she did not need the IRA for her support) was supported by insufficient evidence.

DISCUSSION

I

California Law Controls

Topol contends the court erred in applying California law because her IRA is movable personal property and, as such, Nevada law controls. In support of her contention, Topol cites two sources, neither of which stand for this proposition, as we explain below.

The first source that Topol cites is section 239 of the Restatement Second of Conflicts of Laws. That section, entitled, "Validity and Effect of Will of Land" reads in full: "(1) Whether a will transfers an interest in land and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs. [¶] (2) These courts would usually apply their own local law in determining such questions." Topol claims this section stands for the proposition that "[g]enerally, the law of the jurisdiction of domicile governs the disposition of intangible or personal property (movables) . . . ." Nothing in section 239 supports this position. As the first comment to section 239 states, "(a) Scope of this section. This rule of this Section is applicable to questions relating to testamentary dispositions of interests in land." (Rest.2d, Conf. of Laws, § 239.) The question here relates to the law governing exemption of an IRA.

The second source that Topol cites is a Nevada state case, *Prestie v. Prestie* (Nev. 2006) 122 Nev. 807 [138 P.3d 520]. That case dealt with a conflict of law issue regarding *real property owned in Nevada*. (*Id*. at p. 522-524.) The Nevada court ruled that as to the probate of that real property, Nevada law applied. "[The husband] was domiciled and owned real property in Nevada; therefore Nevada law applies. This court has previously addressed its conflict of laws approach in estate matters: It is clear that the State wherein personal property is located has full power to administer such property. The State has a legitimate interest in requiring probate of property within its borders, to protect creditors. . . . Application of the usual conflict-of-law rule prevailing in such a

situation would require that the personal property be distributed in accordance with the law of the decedent's domicile." (*Id*. at pp. 522-523.)

Here, however, we are not dealing with the probate of real property within another state (Nevada). Rather, we are dealing with which IRA exemption law (California or Nevada) applies to a judgment debtor (Topol) who was arguably a resident of Nevada and has a money judgment against her in California and is challenging the levy of her IRA money in California to satisfy that money judgment.

To answer that question, we turn to a case on point, *In re Marriage of DeLotel* (1977) 73 Cal.App.3d 21. The "principal issue" there was "whether the husband, a resident of Oregon at the time of the levy, is entitled to the exemption granted by the Oregon law -- the law of the state of his residence -- or by the California law -- the law of the jurisdiction whose judgment is involved and in whose court enforcement of that judgment is questioned." (*Id*. at p. 24.) The Second Appellate District, Division Four "conclude[d] that the trial court properly determined that California law applies." (*Ibid*.) The appellate court explained as follows: "Exemption laws pertain merely to the remedy and have no extraterritorial effect and exemption laws of the forum apply. [Citation.] Although, where the exemption laws of both states are practically the same, the exemption law of the foreign state will be granted comity, the foreign law will not be granted comity where to do so would be contrary to the statutory law or the policy of the state of the forum. [Citation.] It has been said that no rule of comity requires recognition of a foreign exemption law. [Citation.] Therefore, the California forum was correct in applying its own exemption laws, and not the Oregon exemption law." (*Ibid*.)

Here, the Placer County Superior Court was correct in applying California's exemption law and not that of Nevada. The two states' laws are not "practically the same" because Nevada exempts the first $500,000 of IRA funds regardless of the debtor's needs (Nev. Rev. Stat. § 21.090, subd. (r)(1) (2016)), whereas California

exempts IRA funds "only to the extent necessary to provide for the support of the judgment debtor . . . taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires" (Code Civ. Proc., § 704.115, subd. (e)). Thus, exempting all the money in Topol's IRA (which here is less than $500,000) regardless of whether she needed that money for her support would be contrary to California statutory law.

II

There Was Sufficient Evidence To Support The Trial Court's Factual Finding That The IRA Funds Were Not Necessary To Support Topol

Topol contends that even if California law applies, she was entitled to the exemption because "the record overwhelmingly supports the necessity of the IRA funds for her support," and the trial court's contrary conclusion was "[u]nsupported by the [r]ecord."

In making this argument, Topol acknowledges the correct substantial evidence standard by which we review the trial court's determination, but then fails to apply it. She cites only to portions of the record that support her argument. However, an appellant "does not show the evidence is insufficient by citing only h[er] own evidence, or by arguing about what evidence is *not* in the record, or by portraying the evidence that is in the record in the light most favorable to h[er]self." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) Instead, an appellant "must present h[er] case to us consistently with the substantial evidence standard of review. That is, the [appellant] must set forth in h[er] opening brief *all* of the material evidence on the disputed [findings] in the light most favorable to the [party that prevailed at trial], and then must persuade us that evidence cannot reasonably support the . . . verdict." (*Id*. at p. 1574.) If the appellant fails to do so, "then [s]he cannot carry h[er] burden of showing the evidence

was insufficient because support for the . . . verdict may lie in the evidence [s]he ignores." (*Ibid*.)

The foregoing principles apply here. In making her insufficiency of evidence argument, Topol cites only evidence favorable to her lack of assets. For example, she cites to her September 2015 financial statement that she claims shows a shortfall of $28,000 annually. What she fails to cite, however, is the evidence provided by Aguayo in the form of her attorney's declaration. That declaration included the following: Topol receives $2,500 per month for a limited liability company (owned and controlled by her son) plus $1,375 per month in Social Security. She wears a ring valued at over $100,000, although she claims to have gifted all her valuable jewelry to her children. Topol produced evidence that included she receives $833 monthly from a $10,000 distribution, and she expends $4,547 monthly (including rent). Adding those sources of income ($2,500 + $1,375 + $833) equals $4,708, which is about $160 more than she needs for her monthly expenses. From this evidence, the court could have reasonably concluded that the IRA funds at issue were not "necessary to provide for the support of the judgment debtor . . . taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires." (Code Civ. Proc., § 704.115, subd. (e).)

DISPOSITION

The order denying Topol's claim of exemption is affirmed. Aguayo shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Mauro, J.